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No. OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1996

TED R. PERKINS, II,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

APPENDIX TO PETITION
FOR WRIT OF CERTIORARI
Volume I of II

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 4:CR-94-0213
	:	Judge McClure
vs.	:	
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

M E M O R A N D U M

January 5, 1995

Background:

On September 20, 1994, a grand jury sitting in the Middle District of Pennsylvania returned a one-count indictment charging defendant Ted Russell Perkins II with distributing and possession with intent to distribute a controlled substance.

Before the court is defendant's motion to suppress evidence seized at a bus station by members of the Pennsylvania State Police. Defendant contends that the seizure violated his rights under the Fourth Amendment. A hearing on the motion commenced December 29,

1994, and concluded January 3, 1995, after jury selection. Presentation of the case to the jury is scheduled to begin January 12, 1995.

DISCUSSION:

I. STANDARD UNDER THE FOURTH AMENDMENT: ABANDONMENT

In order to challenge evidence as the fruit of an unlawful search, the defendant must have a constitutionally protected, reasonable expectation of privacy. Katz v. United States, 389 U.S. 347 (1967). The inquiry is a two-pronged, "subjective-objective" test: (1) Has the defendant manifested a subjective expectation of privacy in the object of the challenged search? (2) Is the defendant's expectation one which society is willing to recognize as reasonable? California v. Ciraolo, 476 U.S. 207, 211 (1986) (citing Katz, supra).

The Fourth Amendment does not protect abandoned property. Abel v. United States, 362 U.S. 217, 241, reh'g denied, 362 U.S. 984 (1960). The test for abandonment is the obverse of the objective prong of the reasonable expectation test:

> The test for abandonment is whether an individual has retained any reasonable expectation of privacy in the object. This determination is to be made by objective standards. An expectation of privacy is a question of intent which "may be inferred from the words spoken, acts done, and other objective facts."

United States v. Rem, 984 F.2d 806, 810 (7th Cir.)(citations omitted), cert. denied, 126 L.Ed. 2d 248 (1993). See also United States v. Lee, 916 F.2d 814, 818 (2d Cir. 1990) ("When a person voluntarily abandons property . . . he forfeits any reasonable expectation of privacy that he might have had in the property."). The objective facts known to law enforcement officers at the time of the search determine whether there is a reasonable

continued expectation of privacy, i.e., whether the property has been abandoned. Rem, 984 F.2d at 811.

Abandonment must be voluntary in fact; it is not voluntary if it is the result of a preceding Fourth Amendment violation or other illegal police conduct. United States v. Ward, 961 F.2d 1526, 1535 (10th Cir. 1992). In Ward, the Tenth Circuit held that the abandonment was not voluntary because of a per se rule that police presence in a confined area, such as a train roomette, is coercive. Ward has been overruled to this extent, since the Supreme Court held in Florida v. Bostick, 115 L.Ed. 2d 389 (1991), that no such per se rule exists, and established a totality of the circumstances test:

> ...[N]o seizure occurs when police ask questions of an individual, ask to examine the individual's identification, and request consent to search his or her luggage--so long as the officers do not convey a message that compliance with their requests is required.

. . .

> We adhere to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.

115 L.Ed. 2d at 400, 401-402.

Although the Supreme Court in Bostick was reviewing the voluntariness of consent, 115 L.Ed. 2d at 400, while the Tenth Circuit in Ward was reviewing the voluntariness of abandonment, the Tenth Circuit held that the same test applies in each instance. 961 F.2d at 1535. This part of the holding of Ward is unaffected by Bostick. See United States v. Little, 18 F.3d 1499, 1503-1504 and 1504 n. 5 (10th Cir. 1994).

There are, then, two separate objective tests. As to abandonment, the test is whether a reasonable person with knowledge of the facts and circumstances known to the police

officer at the time of the purported abandonment would believe that the owner had relinquished all interest in the privacy of the property. As to whether the abandonment was voluntary, the test is whether the police conduct was so coercive that a reasonable person would believe that he had no choice but to act as he did, i.e. to abandon the property.

II. FINDINGS OF FACT

1. The Bestway Truckstop is located near the Milesburg exit (Exit 23) of Interstate Highway 80 (I-80), at the intersection of Pennsylvania Routes 150 and 220, about one mile north of Milesburg.

2. The Bestway Truckstop is used by Greyhound buses traveling on I-80, though its primary use is by truck drivers.

3. The Bestway Truckstop consists of a restaurant, game room, convenience store, motel rooms, and shower facilities.

4. Also in the vicinity of the Bestway Truckstop is a Days Inn and the Buckhorn stop.

5. Other than those facilities, the Bestway Truckstop is isolated, being surrounded by open fields, corn fields, and a wooded area.

6. On September 1, 1994, a Greyhound bus bound from New York City, New York, to Cleveland, Ohio, made a scheduled stop at the Bestway Truckstop.

7. On September 1, 1994, troopers of the Pennsylvania State Police, Bureau of Drug Law Enforcement, Tactical Narcotics Team, were engaged in narcotics interdiction efforts at the Bestway Truckstop.

8. The bus bound for Cleveland arrived at the Bestway Truckstop at approximately 9:45 p.m.

9. When a bus stops at the Bestway Truckstop, the bus driver and passengers generally leave the bus to use the restaurant, convenience store, restrooms, or other facilities at the Truckstop.

10. Members of the Tactical Narcotics Team routinely observe the passengers as they leave the bus for the purpose of observing their reaction to the presence of troopers, to see which passengers have bags and where the bags are placed, etc.

11. When engaged in drug interdiction efforts, members of the Tactical Narcotics Team display some emblem of their authority and position, such as hats, jackets, or badges worn on a chain around the neck.

12. On September 1, 1994, defendant Ted Russell Perkins II was a passenger on the bus which stopped at the Bestway Truckstop at 9:45 p.m.

13. Perkins had boarded the bus at Newark, New Jersey.

14. Both New York City and Newark are known to the Tactical Narcotics Team as source cities for the flow of narcotics through Pennsylvania to such cities as Cleveland or Chicago.

15. When the bus stopped at the Bestway Truckstop, it was positioned near the entrance to the Truckstop, about 50 feet from the door.

16. When the bus stopped at the Bestway Truckstop, Trooper Ernest W. Barber of the Tactical Narcotics Team positioned himself approximately 10 to 15 feet from the bus door.

17. Two other troopers assigned to the Tactical Narcotics Team were positioned in the same area.

18. Trooper Barber concentrated on watching the reactions of the passengers as they became aware of the presence of the Tactical Narcotics Team, who were identifiable

through their apparel or badges, and by the marked canine unit which was parked nearby.

19. The other troopers watched the passengers as they left the bus, as well as those still on the bus to see what might be done with baggage.

20. Defendant was somewhere in the middle of the group of passengers exiting the bus.

21. Upon leaving the bus, defendant appeared to Trooper Barber to be tired, sleepy, and to be stretching.

22. After leaving the bus and walking approximately 10 feet, defendant appeared to notice the troopers for the first time, and his face showed surprise and concern.

23. Because of defendant's reaction to the presence of the troopers, Trooper Barber took special notice of defendant and tried to keep defendant in sight.

24. Approximately 5 to 10 minutes after the passengers departed from the bus, a dog

trained to detect the presence of narcotics was brought onto the bus, and was walked at least part of the way down the aisle of the bus.

25. At the time the dog was on the bus, only one passenger was on the bus.

26. At the time the dog was on the bus, the other passengers had gone to the Bestway Truckstop building, though some stayed near the front of the building to watch the troopers.

27. Defendant stayed outside of the building, pacing back and forth in front of the building, in what appeared to Trooper Barber to be a nervous manner.

28. Defendant watched the troopers who were in the vicinity of the bus, and at times looked toward the wooded area near the Truckstop.

29. In addition to walking the dog onto the bus, the troopers checked the common areas

of the bus, and also looked over the tickets held by the bus driver.

30. One of the troopers, Trooper James Sattazhan, checked the tickets and found that one had been purchased at 6:04 p.m. on September 1, 1994, for a trip that was scheduled to begin at 6:00 p.m. on the same date.

31. Trooper Barber's training and experience have taught him that the manner of purchase of tickets for both bus and airplane trips may be an indicator of narcotics trafficking.

32. None of the tickets examined by the troopers showed a trip that ended in Pennsylvania, so that all of the passengers were going to points west of Pennsylvania.

33. During the time that the dog was taken onto the bus and the tickets and common areas checked by the troopers, Trooper Barber lost track of defendant.

34. Since defendant's conduct had aroused Trooper Barber's curiosity concerning defendant, Trooper Barber wanted to locate and watch defendant.

35. Trooper Barber conducted a search for defendant, looking in the restaurant, store, game room, rest room, basement, and several hallways of the Bestway Truckstop.

36. Trooper Barber did not look in the Buckhorn Truckstop, the Days Inn, or the parking area behind the Bestway Truckstop because none of those areas is frequented by passengers of the Greyhound buses which stop at the Bestway Truckstop.

37. Trooper Barber was unable to locate defendant in any of the areas in which a passenger on a Greyhound bus normally would be found in the Bestway Truckstop.

38. The members of the Tactical Narcotics Team returned to the bus when the time came for passengers to return to the bus.

39. An announcement over the public address system informed passengers inside the Bestway Truckstop building that the bus was preparing to depart.

40. When the troopers returned to the bus, they intended to ask passengers for consent to search baggage.

41. It is Trooper Barber's experience that nearly every passenger who is asked gives consent to a search of his or her baggage.

42. Had defendant returned to the bus, Trooper Barber fully intended to interview him for the purpose of obtaining consent to search his baggage.

43. At no time prior to its departure did defendant return to the bus.

44. While on the bus, the troopers found an unattended bag lying on a seat on the right side of the bus about one-third of the way back into the bus.

45. The unattended bag was not claimed by any of the people seated in the vicinity of the seat on which the bag was located.

46. The bus driver told the troopers that a person matching the description of defendant had carried the bag onto the bus at Newark.

47. The bus driver took notice of the man carrying the bag onto the bus because he had held up the bus for several minutes past its departure time at Newark. See ¶ 30.

48. Passengers on the bus also provided a description of the man to whom the bag belonged which matched the description of defendant.

49. The general description given by both the bus driver and the passengers was that of a tall, thin, black man wearing a black running suit.

50. The description given by the bus driver and the passengers matched defendant when seen by Trooper Barber as defendant

exited the bus and when defendant was pacing the walk in front of the Bestway Truckstop.

51. Trooper Barber held the bag up in front of the passengers who returned to the bus and asked whether anyone on the bus owned the bag.

52. No passenger on the bus claimed ownership of the bag.

53. The troopers removed the unattended bag from the bus and examined it, but found no labels or any other form of identification on the bag.

54. The troopers opened the bag and found three bricks of a white, powdery substance which field-tested positive for cocaine.

55. For purposes of the motion to suppress, defendant admits to possession of the bag. Motion to Suppress at 5 ¶ 24.

56. For purposes of the motion to suppress, defendant admits to being the holder of a valid ticket as a passenger on the bus.

III. SEARCH OF THE BUS

Although the point was not argued in his brief, defendant contended during the suppression hearing that the search of the bus was itself a violation of defendant's Fourth Amendment rights. This argument lacks merit: a single passenger on a bus does not have a privacy interest in the entire bus which is recognizable under the Fourth Amendment. The driver and bus company employees come and go, as do other passengers. A single passenger on a bus has no more interest in the privacy of the bus than a non-owner passenger in an automobile. See generally Rakas v. Illinois, 439 U.S. 128 (1978). See also Florida v. Bostick, 115 L.Ed. 2d 389 (1991)(boarding of bus by police to question passengers and to seek consent to search of baggage is not a per se violation of the Fourth Amendment). The boarding of the bus by the Pennsylvania State

Police at the Bestway Truckstop did not violate any Fourth Amendment rights on the part of defendant.

IV. ABANDONMENT

With regard to the issue of abandonment of the bag, the sole question is whether, based upon the facts and circumstances known to the law enforcement officers at the time of the search of the bag, defendant intended to retain an interest in the bag. The facts and circumstances known to the Tactical Narcotics Team when they removed the bag from the bus may be summarized as follows:

(1) Defendant was on the bus when it stopped at the Bestway Truckstop, and debarked with the rest of the passengers.

(2) Upon seeing the police and the canine unit, defendant showed signs of nervousness and agitation (acting in what counsel for the government termed a "furtive

manner" during the time that the dog was taken onto the bus, a description consistent with the testimony presented).

(3) Defendant stayed near the bus to watch the activities of the police, also scanning the wooded area near the Truckstop.

(4) Defendant disappeared from view during the initial search of the bus, when the dog was brought to the bus.

(5) Defendant could not be located in the Truckstop after this initial search was completed.

(6) Defendant did not return to the bus when it reboarded, and was not present when the second search was conducted, when the bus driver and passengers were interviewed.

(7) Defendant was traveling from Newark to Cleveland, and had bought his ticket four minutes after the scheduled departure time of the bus.

(8) Some passengers and the bus driver identified defendant as the owner of the bag; no other passenger claimed the bag.

(9) No passengers were scheduled to end their trip at the Bestway Truckstop, or even during the rest of the route through Pennsylvania.

Succinctly stated, defendant became nervous when he saw the police, remained agitated while the police were on the bus, disappeared, could not be located when the bus reboarded, and did not return at any time prior to the departure of the bus. These circumstances certainly would lead a reasonable person to conclude that defendant had abandoned his bag.

Although not argued by defendant, a contention could be made that a passenger might simply have forgotten to pick up his bag. The circumstances in this case, however, do not lead to such a conclusion. The Bestway

Truckstop was not a final destination for any passenger on the bus. Nor was the Truckstop a normal destination: it was simply a resting point in the middle of a long trip, located in a relatively remote, rural area of central Pennsylvania. Nor would such an area be a reasonable place for a passenger to simply wander off: there was nothing in the area to arouse particular interest.

Counsel for defendant also pointed out that the officers at the Truckstop did not have probable cause to arrest defendant until after they opened the bag. We agree. However, the officers did not engage in any activity for which probable cause was necessary. They searched a vehicle engaged in public transportation, an activity which is constitutionally permissible. Bostick, supra. They entered the areas of the Truckstop which are accessible to the public. They then re-entered the bus and interviewed the passengers

and bus driver. None of these activities constitutes an infringement of any interest protected by the Fourth Amendment, and no probable cause need be established before law enforcement officers may engage in any of these activities.

V. INVOLUNTARY ABANDONMENT

We have concluded, based upon the foregoing, that defendant abandoned his bag on the bus. Defendant argues, however, that the conduct of the troopers was so coercive as to have rendered his abandonment of the bag involuntary. To use defendant's terminology, he was "harassed" into abandoning the bag.

According to defendant, when the troopers searched the bus with the dog, then left the bus and entered the terminal, a reasonable person would conclude that they had found something. Since they had not found anything, their conduct must have been intended to

convey this impression for the purpose of causing defendant to avoid returning to the bus.

Actually, law enforcement officers who search a bus eventually will leave the bus, whether they have found anything or not.

Moreover, there is no support for the contention that the officers would go inside the terminal only if some incriminating object had been found on the bus. There can be any number of reasons for officers to enter the terminal: to talk to a bus driver; to wait for the next bus to come along; as in this case, to wait for the passengers to reboard the bus, so that they can seek permission to search bags; to use the facilities themselves; etc. It simply is not reasonable to conclude that a police officer who leaves a bus and enters a bus terminal necessarily has found incriminating evidence on the bus.

It should also be added that the attention of the troopers had not centered on the bag at that point in time. There is no indication that they were any more aware of defendant's bag than of any other bag on the bus. In fact, it was only after the other passengers had reboarded the bus that attention focused on the unattended bag. In no way, then, can the troopers have intended to "harass" defendant into abandoning his bag. Nor, as discussed above, would a reasonable person have perceived the conduct of the troopers as harassment.

We reiterate that the standard is objective: Would a reasonable person have felt that he or she had no choice but to abandon the bag? A reasonable person would not feel the need to abandon a bag simply because law enforcement officers are present. Defendant's argument would substitute this objective standard with a "reasonable drug

courier standard": Would a reasonable person with three kilos of cocaine in his or her bag have felt that he or she had nc choice but to abandon the bag? Obviously, the conclusion would be different based upon this standard, but this standard does not apply.

This is not an instance in which, for example, a police officer attempted to make a warrantless arrest without probable cause and a chase of the suspect ensued. Obviously, if such a suspect dropped some sort of object during the chase, even intentionally, the object would be inadmissible due to the earlier Fourth Amendment violation. Here, however, there was no earlier violation, and defendant made a reasoned choice to abandon his bag, not due to any coercion, but due to the chance that he might be caught with the cocaine.

VI. CONCLUSION

The conduct of the members of the Tactical Narcotics Team at the Bestway Truckstop was reasonable within the meaning of the Fourth Amendment. The areas searched initially were not subject to a cognizable privacy interest on the part of defendant. Based upon the facts and circumstances known to the troopers at the time that they reboarded the bus and interviewed the bus driver and other passengers, the troopers reasonably concluded that defendant had abandoned his bag. There was no coercive conduct on the part of the troopers which caused defendant to abandon his bag.

For all of these reasons, defendant's motion to suppress will be denied. An appropriate order shall issue.

/s/James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 4:CR-94-0213
	:	JUDGE McCLURE
v.	:	
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

ORDER

January 5, 1995

For the reasons stated in the accompanying memorandum, IT IS ORDERED THAT defendant's motion (record document no. 24) to suppress certain evidence is denied.

/s/James F. McClure, Jr.
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-7265

UNITED STATES OF AMERICA

vs.

TED RUSSELL PERKINS, II

Ted Perkins, II,
Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. No. 94-CR-00213)
District Judge: Honorable James F.
McClure, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 6, 1996
Before: BECKER and MANSMANN, Circuit Judges,
and SCHWARZER, District Judge.*

(Filed June 19, 1996)

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* Honorable William W. Schwarzer of the United States District Court for the Northern District of California, sitting by designation.

MEMORANDUM OPINION OF THE COURT

MANSMANN, Circuit Judge.

In the matter before us, Ted R. Perkins, II, was charged, in the United States District Court for the Middle District of Pennsylvania, with one count of distribution and possession with intent to distribute approximately 3 kilograms of cocaine in violation of 21 U.S.C. §841(a)(1) and §841(b)(1)(A) and 18 U.S.C. §2.

Perkins filed a motion to suppress a black bag which had contained the cocaine, and following a hearing, the district court denied the motion. Perkins was then tried before a jury; during the trial, the evidence to which he objected was presented by the government. After the jury returned a verdict of guilty, the district court sentenced Perkins to 97 months of imprisonment with a subsequent term of supervised release of 4 years and a special assessment of $50.00. Perkins filed a motion

to permit the filing of a motion for a new trial based on the evidence which he had moved the court to suppress. The motion was granted, but the ensuing motion for a new trial was denied by the district court.

Prior to sentencing, the Probation Department prepared a Presentence Report to which Perkins filed objections, specifically, to the inclusion of two reported prior criminal convictions. In addition, Perkins asserted that he should receive a two point reduction for minor role in the offense as he was merely a "mule" in the transportation of the cocaine.

In this appeal, we are asked to decide whether the district court erred in denying Perkins' motion to suppress the evidence and whether the district court erred, first, in not granting Perkins' objections to the presentence report; and second, in declining to reduce the offense level by two levels

based upon Perkins' alleged minor role in the offense.

I.

On September 1, 1994, members of the Pennsylvania State Police "interdiction team" intercepted a Greyhound bus traveling from New York, New York to Cleveland, Ohio as it arrived at the Best Way Truck Stop at the Milesburg Exit of Route 80 in rural Centre County, Pennsylvania. The State Police, wearing identifying clothing, positioned themselves near the bus to observe the passengers as they disembarked. Officer Ernest W. Barber stood closest to the door; a canine unit with Officer Jack Felicitia prepared to board the bus.

A thin, young, black male whom Officer Barber later identified as Ted R. Perkins, II, exited the bus in a "groggy" manner as though he had been sleeping. When he noticed Officer Barber, Perkins appeared bewildered and

focused his attention on the officers and the canine unit. Perkins paced along the sidewalk in front of the door to Best Way when the canine unit boarded the bus. All but one passenger had departed the bus as requested by the officers.

When the passengers were reboarding the bus, Perkins was noticeably absent. Officer Barber searched the truck stop but could not locate him. The interdiction team then reboarded the bus and secured an unclaimed black leather bag which several passengers stated belonged to Perkins. Several of the passengers and the busdriver gave descriptions of Perkins as he had appeared when he boarded the bus late in Newark, an action which had delayed the departure of the bus. Officer Barber then removed the leather bag from the bus and opened it. Among other items contained in the bag were 3 kilograms of

cocaine. Perkins was arrested a short time later at a nearby truck stop.

II.

Perkins maintains that the district court erred in denying his motion to suppress the black leather bag which contained the cocaine. He argues that he was involuntarily forced to abandon his bag due to the coercion and harassment of the Pennsylvania State Police. It is Perkins' opinion that the State Police had two goals in mind during their interception of this bus. First, the officers remained on the bus after passengers reboarded in order to interview them and gain consent to search their bags. Second, the officers intended by their actions to force or coerce abandonment of bags by individuals. The latter premise is reinforced, continues Perkins, by the fact that a canine unit was escorted onto the bus in view of the passengers, thereby alerting them that a sniff

search would take place. Perkins summarizes that if it was the sole intent of the police officers to interview reboarding passengers, there was no point to the officers positioning themselves and the canine unit in plain view of the passengers as they disembarked; instead the officers intended to force passengers to abandon their bags by not reboarding the bus, especially those who may be transporting illegal drugs.

In Florida v. Bostick, 501 U.S. 429 (1991), the Supreme Court provided us with guidance on the question of whether a police encounter on a bus constitutes a seizure under the Fourth Amendment. The Court held that random searches of passenger buses, as with any other mode of public travel, conducted pursuant to a passenger's consent are not per se unconstitutional under the Fourth Amendment. Id. at 438-439. The Court further opined that in situations involving police

interdiction teams boarding passenger buses, freedom of movement is restricted by a factor independent of police conduct, that factor being one's status as a passenger on a bus. "In such a situation, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." Id. at 436. Under Bostick, the "reasonable person" test presupposes an innocent person. Applying the principles set forth by the Court in Bostick, we find that the district court did not err in denying Perkins' motion to suppress the bag.

While the Pennsylvania State Police interdiction team was performing its routine duties in intercepting the Greyhound bus, Perkins drew the attention of the police officers by his obvious and nervous reaction to their presence near the bus. Further, as the bus tickets reviewed by the officers indicated that none of the passengers was

ending the trip at the present location, Perkins even further piqued the curiosity of the officers when he could not be located at the truck stop and more so, when he did not reboard the bus after the rest period.

Officer Barber testified that he intended to interview Perkins and request permission to search his bag as the officer had done of the other passengers on the bus. When Perkins did not return to the bus and could not be located, the officer determined that the bag which the bus driver and other passengers identified as Perkins' was abandoned property. Barber removed it from the bus and searched it, discovering the cocaine. Ultimately, Perkins did admit possession of the bag.

We conclude that, considering the totality of the facts and circumstances, the court did not err in concluding that Perkins was no coerced or forced into involuntarily

abandoning his bag by the actions of the police officers.

III.

Perkins further contends that the district court erred in not granting his objections to the presentence report which challenged the addition of two criminal history points under section 4A1.1(c) of the United States Sentencing Guidelines. Perkins denies that the petit theft listed at Paragraph 26 of the Presentence Report ever occurred. In addition, Perkins states that as to the assault listed in Paragraph 29, he spent less than 2 hours in jail and was incarcerated only because he could not initially afford to post a bond. Therefore, Perkins asserts, he should have a Criminal History Category of II which corresponds to a period of 87-108 months imprisonment and not a Criminal History Category of III which

corresponds to a period of 97-121 months imprisonment.

During the sentencing hearing, the government presented a certified copy of the record in the May 29, 1986 petit theft and noted that Perkins had appeared before the Akron Municipal Court on several other occasions. Indeed, the offense in question was contained in the Summit County, Ohio, Adult Probation Presentence Report which was supplied to the United States Probation Office. Perkins did not offer any evidence to the contrary. Instead, he testified that he did not have any knowledge or memory of the incident. Consequently, we do not find any error by the district court in finding sufficient evidence to support the determination that Perkins had committed the petit theft and thus, is not granting Perkins' objection to Paragraph 26 of the Presentence Report and the subsequent addition of one

criminal history point relating to the offense.

Regarding the assault listed in Paragraph 29 and Perkins' contention that he serve a de minimis period of incarceration, the pertinent fact is not the amount of time Perkins served but rather that he was sentenced in regard to the assault. U.S.S.G. §4A1.1(c) states that "one point is added for each prior sentence not counted under §4A1.1(a) or (b)." The term "prior sentence" is defined in U.S.S.G. §4A1.2 (a)(1) as "any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense." In addition, Application Note 2 to U.S.S.G. §4A1.2 states that "criminal history points are based on the sentence pronounced, not the length of time actually served." Therefore, we do not find any error by the district court in not granting Perkins' objection to

Paragraph 29 of the Presentence Report and the subsequent addition of one criminal history point relating to the offense.

IV.

Finally, although Perkins asserts that the district court erred in declining to reduce his offense level by two levels based upon his alleged minor role in the offense, Perkins did not offer any supporting argument. Application Note 3 to U.S.S.G. §3B1.2 (mitigating role) states that "[f]or purposes of §3B1.2(b), a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal." The district court determined that no other participants were identified by Perkins as having had a role in the offense and as a result, denied Perkins' request. We do not find any error by the district court in this regard.

V.

Accordingly, we will affirm the judgment of conviction and sentence.

TO THE CLERK:

Please file the foregoing opinion.

/s/Carol Los Mansmann
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-7265

UNITED STATES OF AMERICA

vs.

TED RUSSELL PERKINS, II

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. No. 94-CR-00213)
District Judge: Honorable James F.
McClure, Jr.

Before: BECKER and MANSMANN, Circuit Judges,
and SCHWARZER, District Judge.*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and

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* Honorable William W. Schwarzer of the United States District Court for the Northern District of California, sitting by designation.

was submitted under Third Circuit LAR 34.1(A) on June 6, 1996.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the district court entered on April 19, 1995 be and the same is hereby affirmed.

ATTEST:

/s/P. Douglas Sisk
Clerk

June 19, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	4:CR-94-0213
	)	
vs.	)	JUDGE McCLURE
	)	
TED RUSSELL PERKINS, II, Defendant	)	

MOTION FOR LEAVE TO PROCEED ON APPEAL INFORMA PAUPERIS

AND NOW, comes Ted Perkins, II, pursuant to F.R.A.P. No. 24 and requests leave to proceed on Appeal in Forma Pauperis for the following reasons:

1. I was the Defendant in the above captioned action.

2. On December 29, 1994 and January 3, 1995, I had a hearing on my Motion to Suppress the evidence seized from a black leather bag.

3. Said Motion was denied on January 5, 1995.

4. At jury trial on January 12 and 13, 1995, I was found guilty on Count One of a one count indictment.

5. Following a Pre-sentence Report and an addendum reflecting changes and Defense objections, I was sentenced on April 18, 1995.

6. My sentence was preceded by Defense objections as to the petit theft offense (Paragraph 26) which I did not remember for which I received one point.

7. Another defense objection was made to Paragraph 29, an assault charge, addition of one point, because I was incarcerated one day (the remainder suspended) and I was in jail less than one and one-half (1½) hours, §4A1.2(b)(2).

8. The last defense objection was to a two point reduction for my minor role in the offense.

9. I was represented through sentencing by Attorney Joseph M. Devecka. My sentence was ninety-seven (97) months, criminal history category III, offense level 28. My $50.00

assessment was waived because of my financial condition and earning capacity.

10. I still owe $1,100.00 to Mr. Devecka for the trial of my case.

11. I am also not able to pay Mr. Devecka for his help in preparing this Motion.

12. I am without funds to pay an attorney to represent me on appeal.

13. I wish to have this Honorable Court appoint counsel to represent me on appeal because I am not able to represent myself.

14. My only asset is the $10.50/week I make as a janitor at the Union County Prison where I am incarcerated.

15. I own a car which is a 1982 Oldsmobile which is worthless. I do not know its present location.

16. I have completed and attached an Affidavit which more completely presents my inability to pay the costs of my appeal.

17. I desire to appeal at least four (4) issues:

(a) Did this Honorable Court err in failing to suppress the evidence and in its findings of fact in failing to find that at all times a state police officer was present near the bus;

(b) Did this Honorable Court err in failing to grant Defense objections to Paragraphs 26 and 29, one point additions, which would have reduced my Criminal History category from III to II;

(c) Did this Honorable Court err in failing to grant Defense objections and determine that my role in the offense was minor reducing my offense level from 28 to 26; and

(d) The sufficiency of evidence at trial to convict. (The ineffectiveness of trial counsel if necessary.)

WHEREFORE, I respectfully request leave to proceed on Appeal in Forma Pauperis for the reasons stated in this Motion and the accompanying Affidavit, further I respectfully request that this Honorable Court appoint counsel to conduct my appeal.

Respectfully submitted,

Ted Russell Perkins, II
Union County Jail
103 South Second Street
Lewisburg, PA 17837

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	No. 4:CR-94-0213
v.	:	JUDGE McCLURE
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

O R D E R

April 28, 1995

BACKGROUND:

On September 20, 1994, a grand jury sitting in the Middle District of Pennsylvania returned a one-count indictment charging defendant Ted Russell Perkins II with distributing and possession with intent to distribute a controlled substance. A jury trial was held on January 12-13, 1995, after which the jury returned a verdict of guilty. Sentence was imposed on April 18, 1995.

Before the court are motions by defendant for leave to proceed in forma pauperis on

appeal and for the appointment of appellate counsel.

DISCUSSION:

Defendant's motion for leave to proceed in forma pauperis and affidavit in support thereof indicate that he should be allowed to proceed in that manner, and the motion will be granted.

As to the appointment of counsel, we note that all proceedings in this court were completed as of the date of sentencing. A motion for the appointment of counsel on appeal therefore is properly directed to the Court of Appeals.

Finally, we note that no notice of appeal has been filed, presumably due to defendant's present motions. The notice should have been filed within 10 days of the imposition of sentence. See Fed.R.App.P. 4(b). Since the motion to proceed in forma pauperis fulfills

the content requirement of a notice of appeal, see Fed.R.App.P. 3(c), and clearly states defendant's intention to appeal, the motion to proceed in forma pauperis will be construed as a notice of appeal.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Defendant's motion (record document no. 59) for leave to proceed in forma pauperis on appeal is granted in part and denied in part, as follows:

(a) defendant's motion is granted to the extent it seeks leave to proceed in forma pauperis;

(b) defendant's motion is denied to the extent it seeks appointment of counsel by this court, such denial being without prejudice to a motion for appointment of counsel by the Third Circuit.

2. Defendant's pro se motion (record document no. 60) for appointment of counsel is denied as moot.

3. Defendant's motion to proceed in forma pauperis is construed as a notice of appeal, and the clerk is directed to take action consistent with such construction.

/s/James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	4:CR-94-0213
v.	)	
	)	JUDGE McCLURE
TED RUSSELL PERKINS, II,	)	
Defendant	)	

MOTION TO SUPPRESS CERTAIN EVIDENCE

AND NOW, comes Ted Russell Perkins, II, by and through his attorney, Joseph M. Devecka, pursuant to F.R.Crim.P. No. 12(b) (3) and moves to suppress certain evidence identified below seized without a warrant for the reasons stated below:

1. On September 1, 1994, Pennsylvania State Police made a warrantless search of a Greyhound bus located at the Bestway Truckstop in Boggs Township, Centre County, Pennsylvania.

2. On September 1, 1994, Pennsylvania State Police made a warrantless seizure of a black leather bag from a Greyhound bus that

was the subject of a warrantless search at the Bestway Truckstop on September 1, 1994.

3. On September 1, 1994, Pennsylvania State Police Trooper Ernest W. Barber made a warrantless search of and seizure of a black leather bag seized as a result of warrantless searches and seizures as stated in paragraphs 1 and 2 above.

4. All of the warrantless searches and seizures made in paragraphs 1 through 3 above are the subject of this Motion to Suppress as are all actions of various members of the Pennsylvania State Police in conducting said warrantless searches and seizures in order to harass passengers into abandoning their property or appear to abandon their property due to harassment by authorities.

Evidence to be Suppressed

The following evidence and any and all evidence obtained as a result of the initial alleged illegal search and illegal seizure.

5. Black leather bag seized from a Greyhound bus on September 1, 1994 containing three (3) brick shaped objects wrapped in duct tape, a white T-shirt, a tan baseball cap, a hairbrush and hairpick, and short black hair found tangled among the hairbrush.

6. Hair samples seized as a result of the original warrantless seizure of the black bag pursuant to Pennsylvania State Search Warrant number H21675 including the results of any scientific tests conducted on said hair samples.

7. Statements made after the initial seizure of Ted Perkins to Pennsylvania State Police Officers at the Buck Horn Plaza as to his reason for being at the Truckstop, the reason he was waiting at the Truckstop as well as his personal items seized by the Pennsylvania State Police.

8. Statements made to DEA agent David Keith Humphreys by Ted Perkins, II on

September 16, 1994 while traveling from Centre County to Harrisburg, Pennsylvania.

Conduct of Pennsylvania State Police in Making the Warrantless Search and Seizure

9. The Pennsylvania State Police Troopers involved in the warrantless search of the Greyhound bus, the warrantless seizure of certain luggage, a black leather bag are, as far as can be determined at this time, the following (although there may be additional officers):

(a) Pennsylvania State Police Trooper Ernest W. Barber;

(b) Pennsylvania State Police Trooper James Sattazhan;

(c) Pennsylvania State Police Trooper Jack Felicita;

(d) Several (possibly more) Pennsylvania State Police Troopers not identified.

10. The Pennsylvania State Police Trooper involved as personally seizing a black leather bag and then searching the closed bag is believed to be Pennsylvania State Police Trooper Ernest W. Barber.

11. The Pennsylvania State Police had no specific information to believe that the Greyhound bus in question contained a passenger or luggage containing illegal controlled substances.

12. The Pennsylvania State Police did not observe Ted Perkins, II until he had stepped off the bus:

> [Perkins] . . . exited the bus in a groggy manner and sleepily stretched his arms and then froze for a split second. PERKINS looked bewildered and scared for a moment focusing on the narcotics canine being moved toward the bus. Pennsylvania Criminal Complaint Affidavit, Tpr. Barber.

13. The Pennsylvania State Police "team" intended to induce reactions in passengers exiting the bus, a purely subjective

evaluation, by stationing easily identifiable state troopers and drug dog in the plain (and certain) view of off-loading passengers.

14. Several (or more) Pennsylvania State Police Troopers boarded the bus after some passengers left knowing that there was a limited amount of aisle space and that a passenger may not reboard the bus with the police blocking the aisles and/or standing at the doorway.

15. At the time the Pennsylvania State Police boarded the Greyhound bus in question, two conditions existed:

(a) The Pennsylvania State Police were members of a narcotics interdiction unit and boarded said bus only with the intent of searching for and seizing illegal controlled substances; and

(b) No Pennsylvania State Trooper possessed a Greyhound bus ticket valid for the bus in question.

16. The Pennsylvania State Police Troopers remained on the bus in question or at the doorway of the bus in question as the Greyhound bus reboarded!

17. Before the Greyhound bus in question departed, Pennsylvania State Troopers reboarded said bus.

18. Before the Greyhound bus in question departed, Pennsylvania State Troopers seized the black leather bag, removed it from the bus in plain view through the bus door and then searched said luggage and seized its contents in a warrantless search and seizure.

19. After said warrantless search and seizure of the illegally seized black leather bag, Pennsylvania State Police Troopers reboarded said bus to question the driver and passengers.

20. After the reboarding and questioning that followed the warrantless search of the

black leather bag was concluded, the Greyhound bus was permitted to continue on to Cleveland.

21. It is the policy of the Greyhound Bus Company to have drivers "turn in" to ticket agents or other agents all carry-on baggage "left" on a bus at its final destination.

22. Pennsylvania State Police Troopers contacted no Greyhound official or representative to come to said bus to release said black leather bag.

23. It is the policy of the Greyhound Bus Company to hold carry-on baggage at the destination so that passengers may claim it.

24. Pennsylvania State Troopers did not ask for or receive permission from said bus driver to remove said black leather bag from said bus, but instead removed it under color of their own authority.

25. For the purposes of this Suppression Motion, Ted Russell Perkins admits to

possession of the black leather bag in question.

26. Ted Perkins, II, the Defendant, also states for the record that he held a valid ticket as a passenger of the bus in question.

WHEREFORE, Ted R. Perkins, II, respectfully requests that this Honorable Court suppress all evidence seized as a result of the warrantless search of said Greyhound bus, and/or seized as a result of the warrantless seizure and search of the black leather bag as illegally seized evidence together with all evidence seized as a result of the initial illegality and that the Government not use any of the said evidence in any manner in the above captioned or any other prosecution of Ted Russell Perkins, II.

The Government opposes the granting of the preceding Motion.

Respectfully submitted,

By:/s/Joseph M. Devecka
Attorney for Ted Russell
Perkins, II

111 Sowers Street, Suite 600
State College, PA 16801
(814) 234-5227

PA Attorney ID #29938

CERTIFICATE OF SERVICE

AND NOW, this 28th day of November, 1994, I Joseph M. Devecka, hereby certify that I have, this date, served a copy of the foregoing Motion to Suppress Certain Evidence by causing same to be mailed by U.S. mail, postage prepaid, addressed to the following:

George J. Rocktashel, Esquire
Assistant U. S. Attorney
Room 307 - Post Office Building
3rd & Market Streets
Lewisburg, PA 17837

/s/Joseph M. Devecka,
Attorney for Ted Russell Perkins, II

111 Sowers Street, Suite 600
State College, PA 16801
(814) 234-5227

PA Attorney ID #29938

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
vs.	:	No. 4:94-CR-213
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

TRANSCRIPT OF PROCEEDINGS

SUPPRESSION HEARING

Before: HON. JAMES F. McCLURE, JR.

Date : December 29, 1994; 9:30 a.m.

Place : Courtroom Number Two
Federal Courthouse
240 West Third Street
Williamsport, Pennsylvania

COUNSEL PRESENT:

GEORGE ROCKTASHEL, ESQUIRE
Assistant United States Attorney
United States Post Office Building
Third and Market Streets
Lewisburg, Pennsylvania 17837
For - United States of America

JOSEPH M. DEVECKA, ESQUIRE
111 Sowers Street
Suite 600
State College, Pennsylvania 16801
For - Defendant

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MR. ROCKTASHEL: Your Honor, we call Trooper Ernest Barber.

THE CLERK: Raise your right hand, please.

Be seated.

* * *

ERNEST W. BARBER, called as a witness, having been duly sworn or affirmed, testified as follows:

THE CLERK: For the record, sir, state your full name and spell your last name?

THE WITNESS: My name is Ernest W. Barber, B-a-r-b-e-r.

THE CLERK: Thank you

DIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q Sir, how are you presently employed?

A I'm presently employed by the Pennsylvania State Police and I hold the rank of trooper.

Q And are you assigned to any particular unit or detail at the present time?

A Yes, sir. I'm assigned to the Bureau of Drug Law Enforcement, and am further assigned to the tactical narcotic team in Harrisburg.

Q How long have you been a trooper altogether?

A I joined the state police in 1991.

Q And prior to that time did you have any experience in law enforcement?

A Yes, I was. I was a local police officer since 1987.

Q How long have you been assigned to the tactical narcotics team?

A For almost a year now.

Q Now, in the course of your duties with the tactical narcotics team, were you working on September 1st, 1994, in that capacity?

A Yes, sir.

Q And what were your particular duties or assignment on that date?

A On that date myself and a team consisting of other troopers were assigned to an interdiction detail targeting buses at the Best Way Truck Stop in Centre County.

Q Now, in the course of your career as a state trooper, how many arrests have you made for narcotics offenses?

A During this past year, probably approximately about twelve. Twelve.

Q Were they all in connection with interdiction efforts?

A Some with interdiction. Others were regular undercover work.

Q Now, have you ever had occasion to testify before in any court either in Pennsylvania or elsewhere on the issue of narcotics trafficking, et cetera?

A Yes, I have.

Q On approximately how many occasions?

A This year, approximately nine or ten.

Q Now, have you participated in the execution of any search warrants that resulted in the recovery of narcotics, including cocaine?

A Yes, I have.

Q Approximately how many?

A During my career as a local officer and this year, maybe two or three times.

Q And in the course of your duties, both as a local police officer and as a state trooper, have you had occasion to talk to users of drugs or others in the drug world regarding the packaging, sale and distribution of drugs, including cocaine?

A Yes, I have.

Q Now, you talked about interdiction efforts at the Best Way Truck Stop. Would you explain for the Court what that means and what's entailed in an interdiction activity,

specifically at that drug -- at that truck stop?

A Certainly. When we interdict buses at the Best Way, it's a unique situation in the interdiction of buses, in that buses will stop for a period of anywhere from 45 minutes to an hour. That particular location is a place where the bus driver takes a meal and takes a scheduled break and rests for about an hour.

Once the bus rolls up, we observe people getting off the bus, debarking the bus and their actions. We watch basically environment, what's going on. We check the bus for any hidden contraband, be it drugs, guns, whatever, inside, you know, the visible areas. We eventually get on the bus again or interview people outside of the bus and gain consent searches, if they'll allow that, searching for contraband.

Q Now, with respect to actual drivers themselves, what investigative activities do

you undertake with respect to them to find out information that you might use in the course of interdiction activity?

A This drivers - when they stop, we generally engage in a general conversation with them. How the trip was, any problems, anyone on the bus giving you a problem. And we also ask for their tickets. They provide a series of tickets that the people have to board the bus with. And during the course of our interdiction, the troopers will look at these tickets to see where the people are originated from and where their destinations are.

Q And what kinds of things does your -- strike that. What kinds of things are being looked for in the course of the review of the tickets?

A Trooper Sattazahn is definitely the ticket man on our team, but when I look at them, I'm looking for tickets that were

purchase a short time before departure. I'm looking for tickets from source areas, like New York City and going to other larger cities. I'm looking at tickets that don't have names on them or are suspicious to me.

Q Now, the Best Way Truck Stop is on Route 80, I think you testified to; is that correct?

A It's just off Route 80. It's actually on State Route 150.

Q Now, how would you describe geographically that particular area where the bus stop is located?

A That location is a truck stop. It's a restaurant, and the environs around that truck stop are fields and corn fields. It's very rural.

Q Now, other than the Best Way Truck Stop, is there anything else in the vicinity of that particular location?

A Yes, sir, there is. Just -- I believe it's west of the truck stop, there's a Day's Inn Motor Lodge, and also adjacent to that is another truck stop called the Buckhorn Truck Stop.

Q Now, are they on the same side of Route 80?

A Yes, they are.

Q What side is it, eastbound or westbound? Let me ask you this question. How does Route 80 run, for the record?

A East and west.

Q And Best Way Truck Stop is that on the east side or the west side of the highway?

A It's actually the north side.

Q The north side, which would be the westbound lanes; is that correct?

A Correct. It would be closest to the westbound lanes.

Q And the other facilities you talked about, would they be on the same side of the highway?

A Correct.

Q Now, what time did you go to the Best Way --

THE COURT: Excuse me. Just before you do that. Is this -- just so I could locate it, the Bellefonte exit off Route 80? Is it the exit before Milesburg?

MR. DEVECKA: It is the Milesburg exit, Your Honor.

THE COURT: It is the Milesburg exit.

THE WITNESS: Don't know the exit number off the top of head.

THE COURT: Isn't that Route 220 out at Milesburg?

MR. DEVECKA: It is 220. It exits onto 220, and Milesburg is an exit 150 off 220.

THE COURT: Well, it's the Milesburg exit. That is all I need to know.

THE WITNESS: It's the same road, Your Honor, that the barracks on up there.

THE COURT: Go ahead, Mr. Rocktashel. I'm sorry.

BY MR. ROCKTASHEL:

Q Would Milesburg be the nearest borough or village or town to the exit where the Best Way Truck Stop is?

A As far as I know, it is.

Q Is the Best Way Truck Stop near the exit? Whatever it is designated, according to the route?

A It's about one minute from the exit.

Q Okay. Now, what particular bus lines stop for these 45 minute rest stops that you have described? Any particular lines?

A I have always seen Greyhound buses there. I am not -- I have no knowledge of any other bus stopping there.

Q Now, the Best Way Truck Stop, is that a bus terminal, per se, like a inter-city bus terminal might be characterized, or does it have other facilities there as well?

A No, it seems to me that that is generally a truck stop. Greyhound stopping there is unroutine to that location.

Q Now, as a truck stop, what kind of facilities are there at the Best Way Truck Stop?

A They have motel rooms, showers. They have a restaurant and kitchen area. And they also have a -- like a mini mart type of store where you can go and buy things that you may need.

Q Like a convenience store?

A Correct. They also have a game room there.

Q Now, on September 1st, 1994, what time of day was it that the interdiction team went to that location approximately?

A I would say probably around -- it was either four or six o'clock, I believe. The schedules of the buses change every few months, so the times that we arrived there changed with the schedules.

Q Now, when you arrived there, were members of the team in uniform or plain clothes?

A When we first arrive there, we're generally in plain clothes.

Q At any point in time do you use any kind of apparel or other identifying material to signify who you are?

A Yes, sir, we do. Once the bus arrives, we either wear hats, some guys display their badge, and other members display jackets that say -- either have a state police patch on the shoulders or say state police on them. We want to show the people that we are, in fact, the state police.

Q Now, you indicated that some members wear hats. Does that hat in any signify that you're with the Pennsylvania State Police?

A Yes, it does. It has our patch right on the front.

Q And I think when you talked about some members wearing their badges or identification, you reached to the chest area. How are the badges displayed?

A I actually have mine in my pocket. I can display it. Generally they're on a chain and they go around your head. And they hang loosely around the neck and they can be displayed to people who you are talking to, so they can see that you are, in fact, you know.

Q So for the record, it hangs about midway down the necktie that you're wearing; would that be fair to say?

A About breast level. At the breast line.

Q Now, let me direct your attention specifically to the time of 9:45 p.m. What happened on that particular date that brings us to Court today?

A We were involved in an interdiction detail there at Best Way, and we interdicted a westbound bus that was running from New York to Cleveland during the course of that -- of the bus stopping, we donned apparel. I believe I had on a police jacket. Other members either had hats, jackets or badge or some sign of authority displayed. We were watching the people debark the bus. I was stationed near the door where these peoples would step off the bus.

Q Let me stop you right there. First of all, based on your experience and training, what's the significance of the fact that this bus was westbound from New York to a point west? I think you indicated Ohio, is that correct?

A Cleveland.

Q What is the significance of that particular route and direction of travel?

A It's been our experience there at the bus stop and from past interdictions, that drugs are being run westbound from New York City to other larger cities.

Q What is the significance of New York City?

A It seems to be that that is a distribution point or a place where narcotics can either be bought, you know, or transported from.

Q Now, have you participated in interdiction efforts prior to September 1st, 1994, that resulted in a recovery of any kind of drugs, including cocaine?

A Yes, I have.

Q And could you ex -- describe for the Court typically the direction of travel of the buses on which cocaine or any other drugs were

found and also a point of origin and the direction of travel?

A Certainly, When we work westbound buses, we generally seize cocaine or heroin, and that -- in most times as far as I know and have been told by our lab, it's in a pure book form. We often seize 250 to a thousand grams at a time of either cocaine or heroin. We have seized up to four kilos of cocaine westbound, and over a kilo of white heroin in a time traveling westbound.

Q And what were the points of origin of those particular buses?

A Each and every time it was either New York, meaning the city, Newark, New Jersey, right across the river from New York.

Q And are you familiar with the bus routes out of the Port Authority in New York City and the direction they take once they leave the city and cross the river into New Jersey?

A Generally, I believe it's westbound. Other than that, I am really not that familiar with the inter workings of the New York network.

Q Is Newark one of the stops just outside of New York City?

A Yes, it is. On some bus routes it is.

Q Now, you indicated that you positioned yourself at the door of the bus at approximately 9:45 on September 1st; is that correct?

A That's correct.

Q Where exactly was the bus oriented with respect to the truck stop and the buildings you've described previously, the other facilities?

A The bus stopped approximately directly in front of the entrance way to the truck stop. Meaning the store area and there's what's called a fuel desk in front of this truck stop where there's usually two or three

fuel people working that process truck driver orders and fuel and things like this. And that's generally where all these buses stop, directly in front, so the people can walk directly from the bus into the truck stop or restaurant.

Q How far would one have to walk from the bus on the night, where you were oriented, near the doorway, to the actual entrance of the truck stop facilities?

A I would say approximately 50 feet.

Q Now, are there any barriers or restrictions before you get to this actual entrance to the location?

A Not to the store or restaurant, no.

Q Can the bus pull right up to the doorway?

A Yes, it can.

Q Now, what was the purpose of you standing where you were at that particular time?

A When buses pull up, I like to watch the people debark, and I like to watch their reactions or things that they may do when they see me or someone else from the team. Plus I just like to look at the people and see what the people look like.

Q And what were the other members of the team doing at that time while you were watching the behavior of the people getting off the bus?

A There were other troopers involved to the extent that they were watching the people. Generally our team also watches the interior of the bus to see who's placing packages where, who's placing bags where. We also generally have a canine unit, a canine team with us. They are preparing a canine to check the bus. And we also have troopers that just mill around and listen to what's going on with the people and --

Q Was there a canine unit assigned to your team on this date and time?

A Yes, there was.

Q And who was the officer responsible for handling that dog?

A That would be Trooper Jack Felicita.

Q While you were observing the behavior of the people getting off the bus, what did you see that was unusual, if anything?

MR. DEVECKA: Objection. Leading. Well, he added anything. If anything. I withdraw the objection.

THE COURT: Overruled.

THE WITNESS: As I watched the people get off the bus, it was dark out, so people to me appeared to be tired or groggy, as if they had been resting. I observed a tall, thin black male getting off the bus and stretching and appeared to me to be tired, at which time he noticed my presence.

BY MR. ROCKTASHEL:

Q Now, when you say noticed your presence, what did he do -- what did you see him do you that causes you to describe that behavior?

A He got a very -- almost bewildered look or expression on his face and he basically stopped. And he's looking around. He looked at me. He looked at the dog and the canine, and he immediately attracted my attention to his actions and his reaction.

Q Where was the canine located with respect to where you were at that point when this slender black male got off and looked in your direction and in the direction of the canine unit?

A Canine was proximately positioned between the bus and the truck stop.

Q Could you estimate in terms of feet or distance how far away he was from, say, the bus, approximately?

A If I had to estimate, I would say maybe 30 feet. Twenty feet.

Q But it was a distance, a further distance away from the bus than where you were; is that correct?

A That's correct.

Q And how close were you to the doorway where the passengers were getting off, including the one you've just described?

A I would say approximately 10, 15 feet.

Q And you were wearing a jacket with a state police patch, is that correct?

A That's correct. I had a patch on each shoulder.

Q And do you recall whether or not you were wearing your badge as you've indicated they're sometimes displayed?

A I don't know if I was or I wasn't.

Q Now, do you see that individual that you described getting off the bus groggily and

looking immediately in your direction and the direction of the canine unit?

A Ye-, I do.

Q And would you point to him, please, and identify him by some article of clothing, if you would?

A The Defendant would be Mr. Perkins. He's the gentleman who stepped off the bus. He's wearing a white shirt and looks like a maroon and tan tie.

Q Indicating the Defendant, for the record.

How did he come off the bus? Was he among the first that came off or one of the last passengers that came off?

A He was toward the front of the line, if not toward the middle. He wasn't the first, but he definitely wasn't the last. He debarked sort of soon.

Q Now, you indicated that at some point he appeared groggy, is that correct?

A Sleepy, groggy, stretchy -- stretching.

Q Now, at that -- at the point he first noticed you or you saw behavior that indicated that he saw you, where was he? Was he on the bus or had he stepped off the bus at that point?

A He had stepped off and probably walked 10, 15 feet.

Q Now, were there other passengers behind him getting off the bus?

A yes, there were, as well as in front of him.

Q What did he do, if anything, after he looked in your direction and looked in the direction of the canine unit?

A He looked startled. He looked very, very concerned. More concerned than other people.

MR. DEVECKA: I would object to the conclusion of concern. I would like him to

describe his physical appearance rather than a conclusion.

THE COURT: Sustain the objection.

BY MR. ROCKTASHEL:

Q What did you see him do or how did you see him react that causes you to use the term -- description startled as did you just now?

A Well, he basically stopped dead in his tracks and looked upset to me.

MR. DEVECKA: Objection. Conclusion, upset.

THE COURT: Sustained.

BY MR. ROCKTASHEL:

Q What did you see about his appearance or demeanor that causes you to use the term upset in terms of facial features, body language, if you will, et cetera?

A Yeah. The state that he went from, the tired, stretchy state, to all of a sudden freezing, getting wide eyes, almost staring in some type of emotional state; that I could see

the change of state in emotion from tired to what to me appeared to be concern.

Q And how did that coincide, if at all, with his looking in your direction and the direction of the canine unit?

A When he noticed us, that's when his emotional stated changed.

Q Now, you indicated that Trooper Felicita was there with the canine unit. How was that trooper attired that day?

A I don't recall. I don't recall how he was attired.

Q You don't know whether or not he was in uniform, for instance, or in plain clothes?

A He wasn't in uniform. Sometimes I believe Trooper Felicita wore a jacket. Other times he just wore civilian clothes.

Q And what kind of dog does he have, do you know, offhand?

A I believe it is a black labrador.

Q What happened after -- as you put it, the Defendant appeared startled, in your words?

A Well, at that point he sparked my curiosity and interest, based on his reaction. And I began to watch Defendant Perkins. And he proceeded to just basically stay in front of the truck stop, watching us to see what we were doing.

Q What, if anything, did any of the other debarking passengers do once they got off the bus?

A It's been my experience that debarking passengers generally go either to the restaurant, to the bathroom, inside the store to buy, you know, refreshments of some type.

Q What did you see the passenger -- other passengers do on this particular occasion?

A Just those things. People went in to eat. People went in to the bathroom. People

milled around the store on the inside of the truck stop.

Q Now, after the passengers got off the bus, was the bus locked up at all?

A Absolutely not. No, the bus is always open.

Q Where was the driver during that period?

A The driver was inside the truck stop. He went to the restaurant and I believe he had some type of dinner.

Q Did you know whether or not all the passengers actually got off the bus once the bus stopped?

A In this case one passenger stayed on the bus.

Q Now, you indicated that Mr. Perkins stayed in front of the truck stop area. Did you observe him continuously during the period of time he was in front of the truck stop area?

A As best as I could. We have to focus attention on other people as well as each other for safety.

Q Would you describe for the Court what, if anything, he was doing while he was in front of the truck plaza?

A Mr. Perkins was pacing. He seemed to be pacing up and down the sidewalk, the sidewalk directly in front of the restaurant and truck stop. He would pace toward the far west end of the sidewalk and then he was looking around nervously, and then paced back.

Q And when you say nervously, what did you see him do that causes you to use that description of what he did?

A He paced to the end of the sidewalk and was looking around into the wooded area directly west from the rest stop. And he was looking, you know, just scanning the area, looking around. I don't know how to put into

words. You know, nervously, but to me he looked like he was looking nervously.

Q What, if anything, did you do next in the course of your interdiction activities?

A The next step for us was to do tickets, check the tickets, check the bus, check the common areas, like the bathrooms and aisles and things like that, as well as walk the canine onto the bus.

Q Now, was the canine walked on the bus in this particular case?

A Yes, it was.

Q Now, during this period of time that these other interdiction activities were being undertaken, where were you positioned? Were you still outside the bus or were you someplace else?

A I was outside -- inside as well as outside and on the bus. So I was basically all over the place.

Q Did you ever go into the truck stop itself or any of the related facilities, like the convenience store or the rest rooms, et cetera?

A Yes, I did.

Q Now, were you ever able to chat with or talk to Defendant Perkins during the period of time that the bus was stopped at the truck stop?

A No, I was not.

Q And why not?

A Well, it didn't arise to the point where I wanted to approach Mr. Perkins, and eventually I lost track of him and he fled.

MR. DEVECKA: Objection to the conclusion, fled. Lost track of him.

THE COURT: Sustained.

THE WITNESS: He left the truck stop and was unable to be located.

BY MR. ROCKTASHEL:

Q Now, how did you determine that he was not in the vicinity of the truck stop where you had seen him pacing nervously, for instance?

A Well, he was always in the front area watching our actions. As we continued on with our routine that we perform while interdicting the buses, I decided to check on Perkins to see where he was at and I couldn't locate him.

Q Now, what information, if any, was communicated to you by any of the other troopers with respect to Defendant Perkins?

A Trooper Sattazahn had checked tickets and he found an interesting ticket that was bought from Newark, New Jersey, and was heading to Cleveland.

Q When you say an interesting ticket, what if anything was interesting from the perspective of what you were assigned to do that day?

A Well, we know from looking at tickets that people will travel from New York and Newark to Cleveland, and based on even arrests we have done up there, they transport, you know, drugs or contraband. And it seems to me that these people buy their tickets just before the bus will leave in order to avoid detection or for whatever reason.

MR. DEVECKA: Objection. No foundation for the statement of it seems to me they buy them just before they leave.

MR. ROCKTASHEL: You Honor, I think it will be connected up. I don't see the need to piecemeal the testimony. But if the Court --

THE COURT: I'll sustain the objection as to the comment on it.

BY MR. ROCKTASHEL:

Q Let me ask you this. In your experience working at this particular location doing drug interdiction activities, have you ever seen situations where you recovered drugs

and a ticket was purchased either shortly before the departure time of the bus or shortly thereafter?

A Yes.

Q And was there anything along those lines that attracted your curiosity about the ticket that was related to you by Trooper Sattazahn?

A Yes, there was. The departure time on that particular ticket from Newark was for six p.m., and I believe the ticket displayed a sale time of 6:04 p.m., which was four minutes after the scheduled departure.

Q Now, based on your experience and training in conducting interdiction activities, the -- particularly at bus stops or bus terminals, what significant, if any, is there to the fact that people will purchase tickets shortly before the departure time or shortly thereafter in situations where you've actually recovered drugs?

MR. DEVECKA: I'm going to object to that. He's restricting the set of tickets to those where they've actually recovered drugs, and there is no way of knowing how many people who don't carry drugs purchase their tickets just before the bus left.

THE COURT: Well, I think that's argumentative. I mean you can certainly make that argument, however, this bears on this hearing, which I'm not yet certain; but I'll overrule the objection. You can have this opinion on that.

BY MR. ROCKTASHEL:

Q In your opinion and in your experience and training, what significance is this last minute purchase, or shortly after the departure time, purchase of tickets?

A To me it's a good indicator that there's a possibility that someone is carrying a controlled substance or contraband.

Q And why would one who is carrying a controlled substance or contraband want to purchase the ticket at the last minute?

A Because that person does not want to be --

MR. DEVECKA: Objection. He being asked to speculate about what the person is thinking when he purchased the ticket.

MR. ROCKTASHEL: I'll withdraw the question or rephrase it.

BY MR. ROCKTASHEL:

Q Based on your experience and training in interdicting drugs at the bus terminals, have you encountered this technique of purchasing tickets at the last minute?

A Yes, I have.

Q And in the course of your duties, have you ever debriefed, for instance, confidential informants or other officers who have encountered a similar situation?

A Other officers, yes.

Q And what have they related to you?

A Other officers involved in interdiction have related to me that not only with bus tickets, but as well with airline tickets and things like that, that they are bought at the last minute.

Q Now, did there come a point in time where the bus readied itself for departure?

A Yes, it did.

Q When, approximately, was that? Can you give us an idea in terms of the time from the time when you had started at 9:45 p.m.?

A I would say probably 45 to 50 minutes later.

Q And is that the normal time period when that particular bus on that route begins to have its passengers reenter the bus for departure again?

A That's correct.

MR. DEVECKA: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: That's correct. Each bus -- each Greyhound bus that stops there, in my experience, and every one that I've interdicted there stops for at least 45 minutes there.

BY MR. ROCKTASHEL:

Q What if any interdiction or investigative activities were undertaken around this bus at the time the bus was scheduled to depart?

A The people reboard the bus. And that's generally done upon the beckoning of one of the fuel people. They'll get on the PA and say, the bus going to Cleveland, the Greyhound bus, your bus is ready. Please board at this time.

Q Is there a PA or public address system at this particular location?

A Yes, there is.

Q And do you know which areas of the facility it's broadcast?

A I know it's broadcast to the store area and I believe the restaurant.

Q Was there a determination -- strike that. During the process of departure, what if anything did you notice unusual or out of the ordinary?

A We were missing a person, a rider, one of the people off the bus was missing.

Q How did you determine that?

A Well, I determined it because it happened to be the person that I was watching.

Q And who was that person?

A That was Mr. Perkins.

Q And around departure time where the departure was announced over the public address system, did you see Mr. Perkins in the vicinity of the bus?

A No, sir, I did not.

Q Was the bus itself checked on the inside to determire where Mr. Perkins might be?

A The bus was checked, as well as I personally checked the restaurant, the game room, the store, hallways and the upstairs shower area of the entire bus stop.

Q Now, based on experience with that particular truck stop, why did you check those particular areas?

A Well, just to make sure he wasn't in the building. We have people -- people have failed to get on bus in the past, and in the past -- and we know that we have to check the whole area to try to find them as best as we can.

Q Now, on these occasion where people have failed to get back on the bus, where have you located them, if anywhere?

A Sometimes they've been located generally, I believe, it is west of the truck stop, either in the marsh area or you end up chasing people into the marsh area.

Q Now, if they're located on the truck stop grounds themselves, where do you locate passengers when they're late in getting back on the bus? I'm not talking necessarily about situations where people are carrying drugs, per se, but just in general.

A Generally they're either waiting in line to check out or in the restaurant or sometimes playing probably a game or something.

Q When you say waiting to check out, what are we talking about?

A That would be --

Q Pay at the restaurant?

A Either at the restaurant or in the store area. Buying sodas or candy bars for the trip.

Q Now, when you check these kind of areas in the truck stop facility, the restaurant, the bathroom, the store, the restaurant, et cetera, did you locate Defendant Perkins around departure time for this bus?

A No, sir.

Q Could you hear the departure being announced during the period of time when the bus was scheduled to depart?

A I don't know if I heard it this time or not. I believe I was actually outside during this time.

Q Now, did there come a point in time when any members of the interdiction team, including yourself, entered the bus and talked to passengers prior to its actual departure?

A Absolutely. We do that with each bus. Once the people are back to the bus, two, sometimes three troopers get on the bus and

interview passengers, and our goal there is to gain consent to look in bags.

Q Now, was that done in this particular case?

A Absolutely.

Q And do you know who actually went on the bus to inquire of these bus passengers, ask them questions and inquire whether or not consent could be had to look inside their belongings?

A Yes, sir. There was myself, Trooper Sattazahn as well as Trooper Felicita, I believe that canine handler also boarded the bus without the dog.

Q Now, let me ask you this. How is that typically done and how was it done in this particular case?

A Typically we have a trooper that will walk to the back of the bus, and I like to work the front of the bus. And sometimes if we have an extra trooper to do interviews,

that trooper will sometimes start in the middle area of the bus. And we basically identify ourselves to the person we want to talk to. We're very straight forward.

A typically conversation for me would be, sir, my name is Randy Barber, a trooper with the Pennsylvania State Police. I'm here, I'm trying to interdict the flow of drugs or contraband or guns that's going from New York to Cleveland or Detroit, or whatever other city the bus happens to be running to, Chicago. And I tell them that it's been my experience in the past I've been successful finding drugs on these buses. And I say, would you mind if I looked in your bag, you know. I'm very up forward and up front with them. And generally 99 percent of the time the people let me search.

Q Now, on this particular occasion, September 1st, 1994, did you actually inquire of any people in the manner you've just

described, whether or not you could look inside their bags that they had inside the coach?

A Absolutely.

Q And did anyone comply with your request?

A Everyone that I have asked to search there has given me permission, save two people, if that, in the past year.

Q On this particular occasion, did people give their consent to look inside the bags?

A Absolutely.

Q Now, before we go any further with this phase of the interdiction, let me ask you to describe this particular Greyhound bus that you were on at approximately 9:45 or within that 45 to 50 minute time frame.

A Okay.

Q How is it set up on the inside?

A It -- to me it seems like it's a regular sized bus. There is the driver on the typical driver's side position. Behind the driver's a row of two seats. And on what would be a passenger side is a row of two seats.

Q Now, is there any kind of storage facility for luggage or personal belongings on the bus?

A Yes, sir. The inside compartment of the bus itself has two overhead storage racks that people can put their baggage on.

Q Now, are these racks open or do they have any kind of compartment or anything along those lines?

A On this bus they were open.

Q So you would simply set your bag up on the shelf on the rack and would it sit there, and won't be enclosed by any door or compartment or anything like that; is that correct?

A That's correct. Although some people also store their bags on the floor as well as just lay them on the seat.

Q Is there -- strike that. Was there room under the seats on this particular bus where one could, for instance, stow a bag like they would on an airline or something along those lines?

A Yes, there was.

Q What happened during the course of interviewing the passengers on this particular evening?

A Part of the interview process is to check the ownership of the bags. I'll walk down an aisle and ask a person, you know, sir, this bag is over your head. Is this your bag? And they say yes. Then I ask them, you know, for the permission. During the course of the interdiction --

MR. DEVECKA: I'm going to object to his testimony as to what a passenger told him

concerning this particular investigation as hearsay.

MR. ROCKTASHEL: Your Honor, hearsay is admissible at a suppression hearing, particularly where it's a suppression hearing relating to conduct of the police, what people tell them is, of course, something that informs their conduct in doing certain things, and it's perfectly relevant in this situation to determine whether or not the conduct was lawful or this bag was abandoned.

THE COURT: I agree. Objection's overruled.

BY MR. ROCKTASHEL:

Q In this particular case, what did passengers tell you when you inquired about who owned a particular bag that might or not be over their head?

A The passenger told me that he didn't own it.

Q Did there come a point in time when you ascertained that there was some luggage that did not have an owner on the bus?

A Yes, there was.

Q Would you describe how that was determined?

A During the course of our interdictions we tried to verify ownership of each individual bag as best we can. On this particular bus there was a bag that turned up with no one claiming ownership. The particular bag was in the upper third of the bus on the passenger side and was laying on the seats.

Q Now, what information did you receive from either the passengers or any other person, including the bus driver, concerning whose bag this was on the seat?

A There were conversations held between the bus driver, myself occasionally and Trooper Sattazahn. The bus driver and Trooper

Sattazahn had exchanged conversation regarding the ticket, and the ticket -- I'm referring to the Newark ticket that was purchased at 6:04.

MR. DEVECKA: I'm going to object again to the hearsay from the bus driver.

THE COURT: Overruled.

THE WITNESS: The bus driver --

BY MR. ROCKTASHEL:

Q Did the bus driver tell you and Trooper Sattazahn?

A Correct. That there had been a tall, thin, black male in a black jogging suit that had held him up at Newark because of this bus ticket, and the gentlemen had stuck out in the driver's head because of this.

Q Now, this individual that he described, how did that person -- how did the bus driver's description compare with the Defendant that you saw getting off the bus groggily and then suddenly appearing startled?

A This driver indicated that it was a tall, thin, black male wearing a black jump suit. And that matched the description of Mr. Perkins, who had exited the bus with a black nylon running suit.

Q Did the bus driver indicate to you and Trooper Sattazahn where the Defendant had been sitting on the bus?

A Yes, he did. He indicated that Mr. Perkins was in the upper third of the bus and directed us to a seat on the bus, on the passenger side of the bus.

Q And were there any bags on that seat or in the vicinity of that seat?

A That's where the black bag that did not have an owner was located.

Q What, if anything, did the bus driver tell you or the other troopers concerning the bag that was on the seat where he indicated the male matching the Defendant's description had been sitting?

A Right. The driver indicated to, I believe it was Trooper Sattazahn, that the person who had held him up at Newark carried on this black bag.

MR. DEVECKA: Excuse me, Your Honor. May I have a continuing objection to all matters of hearsay told to these officers either by the driver or passengers, rather than objecting?

THE COURT: You may, and they're all overruled.

MR. DEVECKA: I understand.

THE COURT: I don't think there's any basis for that objection in a hearing like this. Go ahead.

BY MR. ROCKTASHEL:

Q What, if anything, did you learn from other passengers on the bus concerning the owner of this black bag?

A At that time where we discovered the bag had no ownership, I myself asked the

person directly to the seat across that, you know, if that was their bag. They said no. And they related to me that there was a tall, thin male, black male that had, you know, been sitting there and that he, you know, didn't come back. He didn't return.

Q He indicated there was a passenger that didn't leave the bus during the rest stop. Do you know where that person was sitting with respect to the seat where the bag was located and where the other passengers indicated that the male matching the Defendant's description had been sitting?

A That was an older woman, I believe, and she was sitting directly in front of the seat where the bag was located.

Q And did you discuss with her -- or did any other troopers discuss with her whose bag that was?

A I didn't. I believe she was foreign.

Q Meaning that she didn't speak English well?

A I believe so. I'm not a hundred percent certain on that, but I didn't talk to her.

Q Did any of the passengers in the vicinity of the bag or the seat where the bag was located indicate that they owned the bag or it was one of their belongings?

A No one claimed the bag. I asked everyone specifically in that area if they owned the bag or knew who did.

Q At that point do you know where the Defendant was?

A No, sir.

Q And with respect to when you had looked in the areas of the truck plaza for the Defendant, when had the bag -- this unclaimed bag, so to speak been located?

A The bag was located probably less than ten minutes before the bus was scheduled to pull out.

Q And when did you attempt to ascertain the whereabouts of the Defendant with respect to when -- inquiry was made of the passengers and the driver about the bag?

A I'd actually tried to find Mr. Perkins prior to that when the people boarded, and I know that he did not board. I was curious. And I also tried to ascertain his location at that time. Once the people boarded and he wasn't there, you know, I became very suspicious and thought possibly there was something interesting on the bus.

Q Let me ask you this. This bag that you're referring to, would you describe it for the Court in terms of its appearance and composition, et cetera?

A It's a large black leather bag. It's leather. It's got numerous zippers and

pockets. I believe there's a pocket on each side outside, round portion of the bag. And there's an overhead zipper on top of the leather bag. It's a nice leather -- black leather bag.

Q I show you a box of evidence and I ask you to open it up, if you would, please.

MR. ROCKTASHEL: Your Honor, it's approximately 20 of one. Were we going to work until 1:00?

THE COURT: Well, I was only going to go about another five minutes or so.

MR. ROCKTASHEL: Okay. I just want to know in terms of how much I should get into this.

THE COURT: Okay. If you want to stop now, it doesn't really matter. We will take about an hour's time so that people can have an opportunity for lunch, and wherever you think is a good time to stop.

MR. ROCKTASHEL: Thank you.

BY MR. ROCKTASHEL:

Q Allow me to direct your attention to what's been marked as Government Exhibit 2.0. Could you just identify -- tell us what that is for the record?

A This is the black leather bag that I just described as being the bag that was located on the Greyhound bus in the area behind the woman that wouldn't get off the bus. And which was the bag purported to myself and Trooper Sattazahn to be the one carried on by the black male from Newark.

Q As related to you by the other passengers and --

A And the bus driver.

Q -- and the bus driver. Other than talking to the passengers in the vicinity of the bus about this bag, Exhibit 2.0, and the bus driver, did you undertake any other

efforts to determine who owned the bag, if anyone, on the bus?

A Well, we did the obvious. We checked for name tags or any signs of identification on the bus. Other than that, we just asked people in the vicinity of the bag as well as check the entire bus for ownership. Generally when -- or I'm sorry. Most of the time that I know of, or every time that I've been involved with an abandoned bag, we hold it up to the bus and we say --

MR. DEVECKA: Objection to the conclusion of abandoned bag.

THE COURT: Overruled. He considers it to be such. Go ahead.

THE WITNESS: We hold up the bag that no one -- no one claims and display it, you know, visually for everyone to see and we ask if this is their bag.

BY MR. ROCKTASHEL:

Q Now, did you do that in this particular case on September 1, 1994?

A Yes, we did.

Q And what response, if any, did you get from the passengers on the bus, indicating whether or not anybody claimed the bag?

A We got a negative response. No one claimed ownership.

Q Now, this seat where that bag was located, did that have an overhead rack above it as well as -- strike that. Did it have an overhead rack above it just like the other seats on the bus?

A Yes, it does. The overheads run from the length of the entire bus.

Q And it did run across the top of the seat where this particular item was found?

A Yes, sir, it did.

Q Now, was the bag under anything or was it displayed openly?

A The bag was displayed pretty much in its present state, just laying on the seat. The seats are double seats and it was just laying right on top of the seat.

Q Did you have to move anything out of the way to get to the bag?

A Absolutely not.

Q After you held the bag up and displayed it and determined that no one was claiming the bag, what did you do next?

A We walked the bag off the bus and opened it.

Q And at that point in time, why did you open it?

A We couldn't find an owner.

MR. DEVECKA: Objection to the term we unless he identifies the other parties.

MR. ROCKTASHEL: I think it's clear.

THE COURT: I assume he means himself and the other troopers. There were three or four of you there, is that right?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

THE WITNESS: Myself and the other troopers, as in the past when we find bags that lack ownership, walk off the bus and we open it.

BY MR. ROCKTASHEL:

Q And did you open this particular exhibit, Exhibit 2.0?

A Yes, we did.

Q And what did you find inside, if anything?

A Inside we found a white T-shirt, a brown hat, there was a brush inside, a hair pick, and there were also three square packages over wrapped with duct tape, what I suspected as cocaine.

Q I'm going to show you what have been marked for identification as Government's Exhibit 5.0 and 5.1. Would you identify what they are, please?

A. Yeah. These were the over wrapped duct taped packages that we found inside of this particular black bag. Also in the photograph in the background you did see the actual -- this particular bag.

Q And those are the duct taped packages that you found when you opened that bag, is that correct?

A That's correct.

Q In addition to the other item?

A This is the state that they were in.

Q Now, had you ever seen packages packaged in that manner prior to this occasion?

A Well, we see a variety of packaging and wrappings and over wrappings when we do interdictions, generally we see some type of electrical tape over wrapped. This is actually as far as I know, and as far as I had found, the first duct tape ones that we found as an over wrap. We find duct tape

underneath, but this was the actual outside layer.

Q Now, have you had any training with respect to the packaging of controlled substances like cocaine?

A Yes, I have. Over the past five -- four or five years, I've had numerous training in drug enforcement, and if I may refer to certificates of training, I can easily refresh the dates and the particular courses.

MR. ROCKTASHEL: Your Honor, I think this might be a good opportunity to break, because that may take a while.

THE COURT: That's fine. We'll recess until quarter of two.

(Whereupon, a luncheon recess was taken.)

AFTER RECESS

THE COURT: May I see counsel at sidebar? Off the record.

(Whereupon, a discussion was held off the record between the Court and counsel.)

(Whereupon, the following occurred at sidebar between the Court and counsel:)

THE COURT: I was just suggesting that to expedite matters this afternoon, it seemed that the only evidence that's relevant to the issue of suppression of the contents of the bag and which may be relevant to the propriety of actions taken after that have only to do with the total -- totality of the circumstances surrounding the officers' conduct leading up to and culminating in the opening of the Defendant's bag, whatever that might have been. His observations, his information obtained from other people, and all that you may wish to produce.

But that what happened after the entry into the bag, the identification of the contents as to what was there, whether in fact it was cocaine as asserted in the record, and whether or not the hair samples were properly

obtained, all must be based upon the propriety of the entry into the Defendant's bag.

MR. DEVECKA: I think they do have to establish, through, that the brush was -- the bush and pick were in the bag. I think that that's important to establish that the fact that the search warrant then is the fruit of the opening of the bag.

THE COURT: Well, are you contesting -- you're contesting the search warrant. I don't -- well, if you're worried about that, you might go ahead and at least have him identify what you find in the bag.

MR. ROCKTASHEL: I planned on a more streamlined expedition on the actual -- his ultimate apprehension, stop, what was in the bag. I'm not going to really go into any details. I am considering seriously not calling Officer Felicita -- Trooper Felicita because I think it would tend to be repetitious, although he did -- when he was

stopped, he did make some statements. But I think he was in custody at this particular point in time.

So we are back to the fruit of the poisonous issue. Officer Sattazahn reviewed the tickets themselves and gained the information. I may call him for that limited purpose, but that's prior to the actual opening of the bag.

THE COURT: Sure. Anything that happened prior to the opening of bag.

MR. ROCKTASHEL: We're on the downhill side of this trooper's testimony now.

THE COURT: I hope so.

MR. DEVECKA: Off the record.

THE COURT: All right.

(Whereupon, a discussion was held off the record.)

BY MR. ROCKTASHEL:

Q Sir, I think you were telling us before we broke that you had received some

training in the area of -- in the investigation of drug trafficking. Would you describe your training in that area for the Court, please?

A That's correct, I was. I think the easiest way to do it, if I could refer to certificates of training, that would help me recollect the dates and the specific course, if that's fine.

Q What kind of courses or training have you taken?

A They're basically narcotic investigations -- or excuse me, drug investigation courses, interdiction courses, training courses, in the areas of related narcotic enforcement.

Q And what agencies have sponsored these kind of training programs?

A Pennsylvania State Police have, the Attorney General's Office has, the DEA has.

There's been some college seminars. It's mostly federal and state certificates.

Q So it would be Pennsylvania Attorney General's Office, the Pennsylvania State Police and the federal drug enforcement agencies; is that a fair summary of the agencies that have sponsored the courses you've taken.

A Also the Federal Highway Administration, as well.

Q With respect to these courses offered by those agencies, could you estimate approximately how many hours in terms of course time you've taken overall?

A I would say at minimum, a month. At least four weeks.

Q Four weeks of training?

A Minimum.

Q Now, in connection with those courses, have you received any kind of training with respect to how drugs packaged in bulk form or

actually packaged and the kinds of material that are used to package those things?

A Yes, I have.

Q And specifically what courses have you taken with respect to that kind of packaging?

A Okay. One course that covered that was a conference I went to down in Counsel of Governments at Virginia Beach. That was a three day course that covered narcotic investigations and packaging, transportation techniques part of that course.

Q Now, did that training include the use of tape, like electrical tape you've described during previous recovery of drugs and the duct tape which you found wrapping the packages that were found from Government Exhibit 2.0?

A I don't know about electrical tape, but I do recall them using duct tape during the seminar because at that time, this was back in 1988, that was the tape that was being used.

Q What is the purpose of using duct tape, based on the courses you've taken or the training you've taken or any kind of tapes, such as the electrical tape you've seen on past occasions?

A The tape is over wrapped around the substance to keep the substance from leaking. It prevents leakage, keeps it in a nice, compact state. It if gets bounced around, it's not going to get popped open. It really secures the package. Also there's some type of what people believe is masking effect. If they over tape it enough times, it's an attempt to deceive the narcotic canine dog.

Q Now, I've shown these exhibits previously, they're Exhibits 5.0 and 5.1. These are the three bricks of cocaine wrapped in duct tape, is that correct?

A That's correct.

Q Now, would you open the bag, Exhibit 2.0, please? What's inside the bag? Could you just identify the objects?

A Okay.

Q By Exhibit Number, if they have one?

A The Government Exhibit 1.1, which is the third of three, is the contents of one of the brickettes I removed from the bag at the time of its seizure.

Q And I take it it's been emptied into the clear plastic bag in the course of the laboratory analysis, is that correct?

A I believe that's correct.

Q Is there any more like that contained in the black bag?

A Yes, there is. There's two additional. There's Exhibit 1.0, which is the first of -- looks like two marked on this one, but this was also in there. And as well, there's a third which is marked 1.0, two of two.

Q How would you characterize the weight of the duct tape wrapped bricks containing the cocaine you have just identified for the record?

A A kilo. It's what I recognized as a kilo.

Q At the time you picked them out of the bag or you felt them, how did they feel to you in terms of their weight or consistency?

A The consistency of those bricks was compact. It was actually in a compressed form. The lab had to bust up the substance to get to the taping.

Q Now, based on your experience and training, when you opened the bag and found those bricks in there, what did you believe them to be?

A At that time I suspected they were cocaine.

Q And why is that? What aspects of them caused you to believe this?

A Based on the shape and configuration of the bricks, and the over taping, basically more so on the shape of the bricks.

Q Now, had you gotten a search warrant before you opened the bag, Government Exhibit 2.0?

A No, sir.

Q And why not?

A The bag -- I believed to be abandoned and didn't require, under state law, a search warrant.

Q And why do you say was abandoned? What facts and circumstances were apparent to you that caused you to believe that it was, in fact, abandoned property?

MR. DEVECKA: Objection. Misstated the witness's testimony. He said he believed it abandoned, but was asked why was it abandoned or what factors led him to --

THE COURT: Sustain the objection.

MR. ROCKTASHEL: I'il rephrase the question.

THE COURT: What is the basis fcr his opinion.

BY MR. ROCKTASHEL:

Q What's the basis of your belief at the time that you took the bag that it was, in fact, abandoned property?

A That there were several facts and circumstances to my knowledge at the time that led me to believe that the bag in question here was abandoned. The bag itself doesn't have any type of ownership tag or identifiable items attached to it. That is --

Q Why is that significant?

A Well, I know when I travel, I have a name tag on my bag in case I get separated from it.

Q What other facts or circumstances support your view that the bag was, in fact, abandoned?

A The tag is just one indicator. From there we could not find an owner. There was no one sitting next to it claiming ownership. There was no one sitting around it claiming ownership. And as a matter of fact, the entire bus, no one claimed ownership. Couple that with the fact that we had a witness, the driver himself telling us that the owner of this bag wasn't on the bus, you know. He's not there. We tried to locate the owner. We, as a matter of fact, sent marked patrol units scouring the area trying to find the owner, with negative results. With all this knowledge, I terms the bag abandoned.

Q Now, the person that was described by the bus driver you had stated previously matched the description of the person you saw exiting the bus, specifically the Defendant; is that correct?

A True.

Q And what, if anything, about the demeanor or activities of the Defendant caused you to believe the bag was abandoned?

A Well, he left that particular stop unscheduled. There was no ticket terminating at State College or at Milesburg. All the tickets on the bus were to locations west of Pennsylvania. As a matter of fact, I don't think anyone was terminating in Pennsylvania.

Q Had you determined prior to opening the bag exactly where that particular person's destination was, specifically the Defendant's destination based on the ticket?

A I believe we had, just by the ticket that the driver purported to be the ticket of Mr. Perkins.

Q And was that destination Milesburg?

A No, it was not. It was, in fact, Cleveland.

Q You had indicated that the Defendant was pacing in front of the location of the--

MR. DEVECKA: I'm going to object to the leading nature of these questions. He's redirect --

THE COURT: Sustained.

BY MR. ROCKTASHEL:

Q Did you ever locate -- strike that. At the point in time where you -- when you were attempting to ascertain the ownership of the bag, had you undertaken any additional efforts to locate the Defendant?

A Yes, we had. We had searched the inside of the facility. Then we had commenced an outside search of the facility to include the calling of regular patrol troopers from the interstate and the county patrol surrounding areas to try to ascertain the whereabouts of the Defendant.

Q Now, did that take place prior to or after the -- you looked inside the bag?

A That was definitely after we had found the drugs in the bag.

Q Now, prior to the time that you actually opened the bag itself, had you undertaken, either yourself or through other officers, any search of the premises of the truck stop facility?

A Oh, absolutely. Myself, Trooper Sattazahn. I know myself, I checked the restaurant, I checked restrooms, I checked the store area. I checked the entire internal building with a negative result.

Q You didn't find the Defendant anywhere?

A No, I did not.

Q And that search took place prior to the time the bus was called for boarding?

A That's correct. We searched before the final boarding and we searched after, you know, we found the bag.

Q Did the interdiction activities, the investigative activities that were undertaken,

including the recovery of the drugs in the bag, delay the departure of the bus at all?

A There was a delay. Basically when we find drugs in a bag, the bus drivers are very curious and they like to hang around and see what's in the bag, which --

Q Was that true in the particular instance?

A Yes. The driver did, in fact, view the contents of this bag.

Q And could you estimate how long this delay was?

A I would say less than ten minutes.

Q Ten minutes beyond the usual time that this bus would depart after the termination of the rest period, is that correct.

A Approximately.

Q Now, have there been other occasions where you've received property that you've determined to be abandoned prior to this particular occasion?

A Yes.

MR. DEVECKA: Objection to the use of the term determined to be abandoned in the question is not proper.

MR. ROCKTASHEL: Your Honor, I said that you determined to be abandoned. It's really his determination.

THE COURT: I understand, Mr. Devecka, whenever he says that, that's his opinion.

MR. DEVECKA: With that in mind, I withdraw the objection, Your Honor.

THE COURT: Go ahead.

BY MR. ROCKTASHEL:

Q Have there been other occasions in your interdiction activity at Milesburg where you've determined certain property to be abandoned?

A Yes, there is.

Q And on approximately how many other occasions?

A I'm just guessing. I would say maybe around 30.

Q And in the course of locating property determined to be abandoned, was there any drugs recovered from the property?

A In each time that we have located a bag that I felt was abandoned, we have either found drugs, narcotics, or guns. Or money.

Q In which direction were those bags traveling on the bus that were later determined to be abandoned and contained the contraband that you've described?

A Heroin and cocaine travel westbound. Marihuana and -- marihuana travels eastbound. Guns have been going both directions.

Q Now, was the Defendant ever located?

A Yes, he was.

Q And where was that?

A He was located in near proximity to the actual truck stop. It was an adjoining -- I'm sorry. Not adjoining, but it was the

nearby truck stop, maybe one tenth of a mile, maximum, away.

Q What kind of terrain, if any, separates the location of the Best Way Truck Stop and where the Defendant was ultimately found?

A There's a little hill, woods and marsh area there.

Q Did you ever see the Defendant at the location where he was eventually found?

A Yes, I did.

Q And do you know what time he was found, approximately, with respect to the time that we've been talking about, the 9:45 period when the bus pulled in?

A Yeah. I could refer to my report, but I believe it was just prior to midnight.

Q So approximately two hours after you had noticed the Defendant not in the truck plaza area, is that correct?

A That's correct. Two hours is a good estimate.

Q And would you describe very briefly for the Court how the Defendant appeared at the time you saw him there?

A At the time I had the opportunity to go down and view Perkins, he was wearing a black nylon jump, running suit thing. He had had a -- this was a two piece outfit. It was pants and a jacket. The jacket was, in fact, reversed when he was stopped at the nearby truck stop. When he had originally come off the bus, there's a gray panel on the front, a grayish white panel on the front of his jacket. At the time of his being stopped at the next truck stop two hours later, it was, in fact, reversed.

His clothing had -- around the pants, had little splotches of mud and water on them. That appeared very recent, and very fresh.

Q Now, you indicated when you went in to the bag, in addition to the three bricks of cocaine that you found there, you found, I think, it was a ball cap; is that correct?

A That's correct.

Q A T-shirt?

A That's correct.

Q Any other objects other than the ones I've attempted to summarize?

A There was a hair pick and a hairbrush, and there was also a set of keys.

Q Now, are the hair -- is the hair pick present in this courtroom?

A The hair pick is, yes.

Q How about the hairbrush itself?

A The hairbrush is currently logged into the laboratory in Harrisburg.

Q And what was the purpose of doing that?

A The hairbrush contained hair which at the time that I observed it, I believed

belonged to the hairs of the Defendant Perkins. So I submitted that to the lab, along with some sample hairs that I withdrew from Mr. Perkins' head with a search warrant.

Q And did you, in fact, obtain a search warrant?

A Yes, I did.

Q And just for the record, I'm going to show you Government's Exhibit 6.0. Do you recognize that document?

A Yes, I do.

Q And what is it?

A This is the search warrant number H21675, which is a search warrant that I applied for to get 25 -- or approximately 25 hair samples from a representative area of the head of Ted Russell Perkins.

Q And did you, in fact, obtain those hair samples?

A Yes, I did.

Q And are they inventoried anywhere in the exhibit I've just shown you?

A The last page of the exhibit you've handed me contains a receipt inventory form that we use in conjunction with the search warrant and on it, on line one, is a listing for 25 hair samplings.

Q And what was done with the hair samples you recovered?

A I submitted those samples, along with the hairbrush, to our lab division in Harrisburg to do a comparison from the hairs matched -- I'm sorry -- for a comparison of the hairs found in the hairbrush to the hairs that I pulled from Mr. Perkins.

Q I'm going to show you Government Exhibit 4.0. Would you tell us what that is, please?

A This is a photostatic copy of the Greyhound lines bus ticket which is the ticket that I was discussing from Newark to

Cleveland. It was purchased, or purported to be purchased by the Defendant Perkins by the bus driver.

Q How was the copy of that ticket obtained?

A We photocopied the copy that the bus driver had during the interdiction. I believe it was photocopied by Trooper Sattazahn.

Q Does that ticket indicate the time of departure anywhere?

A Yes, it does. In the upper right-hand corner there's an indicator field DEP, which I assume to mean departure, and it has 015 -- I'm sorry, 01, September, '94 at 0600 P, which is 6:00 p.m.

Q And is there an indication as to when the ticket was actually purchased.

A That's on the left-hand column of the ticket. Right underneath confirmation number there's a date, 1, September, '94, and the

time of 0604 P, which I interpreted to be 6:04 p.m.

Q Now, you indicated that you had at least three troopers there, including yourself, Sattazahn and Felicita; is that correct?

A That's correct.

Q Did you have any motor vehicles, state police motor vehicles present?

A We all had our government or state issued vehicles with us.

Q Were they marked or unmarked units?

A Everyone on my team has unmarked, unconventional police unit. The only marked vehicle there was a state police canine unit which belongs to Trooper Felicita and his canine.

Q I asked you about information provided to you by the passengers and the bus driver concerning the person who was sitting in the

seat where the bag was located. Do you recall that testimony?

A Yes.

Q How did the descriptions of the passengers compare with the description of the person you saw and identified as the Defendant and the description provided by the bus driver?

A They matched. They all matched. As a matter of fact, they all matched very well. Everyone, even though it wasn't a detailed description, they all said tall, thin black male with a black running suit on. I checked the bus and there was no one else matching that description.

Q Now, when the Defendant was later found at the nearby facility two hours after the bus pulled into Milesburg, do you know whether or not the Defendant was ever arrested during that time period?

A He was stopped by Trooper Felicita. He was -- I came down at that point and we did place him under arrest.

Q Now, prior to that time had you provided any descriptive information concerning the Defendant to either Trooper Felicita or any other troopers in the area?

A We had hand held radios and we were in contact with the Milesburg interstate patrols and the Rockview uniformed patrols there, and we had broadcast the description to those units and Trooper Felicita was aware of the description.

Q And how did you know to go over to the location where Felicita located the Defendant?

A We had actually started to break up for the evening. We figured that we had lost him and we weren't going to find him. We terminated the interdiction detail. Trooper Felicita was on his way home. Checked the truck stop and apparently found Perkins. He

then radioed to Trooper Sattazahn, who had his radio still on. And he received the transmission from Felicita indicating that he had found the suspect.

Q And was he arrested at any particular time?

A Yes, he was.

Q And on what basis was he arrested?

A He was basically arrested by myself and Sattazahn in the presence of Felicita for the narcotics.

Q The narcotics you had recovered from the bag?

A That's correct. And that was based on, you know, all the circumstances and facts.

Q What items, if any, were recovered from the Defendant's person when he was arrested?

A Perkins had some cash, somewhere in the vicinity of, I believe, a hundred dollars. There were some condoms in his pocket. There

was in his possession an electronic paging device, known as a pager. And a piece of paper with a New York City, New York number scribbled on it.

Q How did you determine that it was a New York City number?

A We checked the area code.

MR. ROCKTASHEL: Your Honor, may I have a brief moment to check my notes?

THE COURT: Sure.

BY MR. ROCKTASHEL:

Q Are you familiar with the bus schedules for the westbound buses that would stop at this particular location in Milesburg?

A We familiarize ourself with them, but they change periodically.

Q And do you know whether or not there were any scheduled transfers or any other kind of buses scheduled for pick up at this particular location?

A No, there was not. Not to my knowledge.

Q For tickets sold at this particular location, to your knowledge?

A I believe they can be.

Q And how was that accomplished?

A They would have to go to the fuel desk, I believe, and order one there. That's just based on me seeing a sign there for Greyhound, and it says inquire at desk. I don't know if, in fact, you can or can't.

MR. ROCKTASHEL: Thank you, sir. I don't have any other questions at this time.

THE COURT: Cross-examine.

MR. DEVECKA. Thank you.